
(2018) 10 CAT CK 0028

In the Central Administrative Tribunal

Case No : Original Application No. 2922 Of 2018, Miscellaneous Application No. 3272 Of 2018

Ram Raksha

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 24-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0028

Hon'ble Judges : L. Narasimha Reddy, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Naresh Kaushik, Vardhman Kaushik, Kripa Shankar Prasad

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. This OA is filed by the applicant with a prayer to declare his adverse ACR for Part-I of the year 2011-2012, i.e., for the period 11.05.2011 to 02.12.2011, as non est and void ab initio, and to quash the orders dated 28.05.2013 and 21.11.2017 passed by the respondents rejecting the representation and appeal respectively, preferred by him. His further prayer is to direct the respondents to conduct a review DPC and to grant him promotion in the Higher Administrative Grade (for short, HAG) (NF) category w.e.f. 31.01.2018.

2. The applicant joined the Indian Railways as Assistant Controller of Stores in the year 1987. He earned several promotions thereafter. In the year 2011, he was posted as Controller of Stores, Workshop Project Organization, Patna. His Reporting Officer was one Shri Rajiv Misra, the 3rd respondent herein. At present the applicant is working as Chief Material Manager, Northern Railways.

3. For the period, referred to above, the applicant submitted his self-evaluation indicating various achievements said to have been accomplished during that period. The 3rd respondent who acted as the Reporting Officer at that time, however, disagreed and graded him as "Average". The applicant contends that

his performance throughout the career was never below the level of "Very Good", and even for the remaining part of the year 2011-2012, he was graded as "Outstanding".

4. He contends that the 3rd respondent wanted him to place an order worth about Rs.6 crores on a particular agency for supply of Gas, and when he did not accede to that by stating that he does not have the power to do that without the approval of the Railway Board, the 3rd respondent bore grudge and recorded the ACR to his detriment. It is also stated that the Reviewing Officer did not apply his mind and simply affirmed the gradation given by the 3rd respondent. The applicant further contends that though a detailed representation was made to the Appellate Authority, the same was rejected through a one line order, without assigning any reason whatever.

5. On behalf of respondent Nos.1 & 2, counter affidavit is filed. It is stated that the scope for interference with the ACR is very limited, and that the gradation given by the Reporting Officer was accepted by the Reviewing Officer, as well as the Accepting Authority. It is further stated that the competent authority has also considered the representation made by the applicant with reference to the record and passed an order.

6. We heard Shri M. K. Bhardwaj, learned counsel for the applicant, and Shri Hanu Bhaskar and Shri Naresh Kaushik, learned counsel for the respondents.

7. The issue involved in the OA is about the legality or otherwise of the gradation in ACR for the period 11.05.2011 to 02.12.2011 given to the applicant.

8. A summary of the gradation of the ACRs of the applicant from the year 2001 onwards is furnished at pages 11 & 12 of the OA. Except for the period in question, it was either "Very Good" or "Outstanding" for all these years, and only in the year 2009, the applicant was graded as "Good". In para 4 (iii) of the OA, the applicant has made a specific reference to certain incidents, and the manner in which the 3rd respondent has pressurized him to place an order contrary to the stipulated procedure. The said paragraph reads as under:-

4. (iii) That Shri Rajiv Misra, Respondent No.3 herein, submitted a non-stock demand bearing No.0135600003 dated 18.08.2009 to the Applicant on 08.06.2011 i.e. after a period of two years from the date of generation of demand. The procurement was for 1500 MT of LPG valuing Rs.6.92 crores and Respondent No.3 asked the applicant to place order on one firm namely M/s IOCL without following the prescribed procedure of calling for a tender.

As the Applicant refused to place the said order and advised Respondent No.3 to seek Railway Board's approval on the said matter since he was not authorized to place orders beyond a sum of Rs.5,00,000/- (Rupees Five Lakh only), the Applicant was unnecessarily pressurized by Respondent No.3 to release the purchase order without approval.

It is submitted that it was this incident and due to the resistance shown by the

Applicant to place the order without the requisite approvals which irked Respondent No.3 who became angry and biased against the Applicant thereafter. It is also pertinent to mention that after the transfer of the Applicant on 02.12.2011, such procurement was ultimately put up for approval to the Railway Board vide letter dated 21.12.2011 by Respondent No.3, which was infact the Applicant's suggestion all along while he was being pressurized by Respondent No.3 to release the purchase order without seeking requisite approvals from the Railway Board. A copy of the letter dated 21.12.2011 by which the procurement was put up for approval to the Railway Board is annexed herewith and marked as Annexure-A/2.

9. In the counter affidavit filed by the respondents, a general allegation is made to the effect that the representation lacks details, and reference is made to the judgment of the Hon"ble Supreme Court. The specific allegation made by the applicant is not dealt with at all.

10. Recognizing the fact that there is every likelihood that a superior officer expressing his displeasure in the context of ACR while making the evaluation of a subordinate officer, a hierarchy of authorities is provided. The remarks made by the Reporting Officer are subject to review by the Reviewing Authority and both, in turn, are subject to the views of the Accepting Authority. Even where an employee feels that he suffered in the hands of three officers referred to above, a facility exists for making a representation/appeal to the competent authority. At that stage, the competent authority is required to examine the matter in detail, duly calling for the remarks of the Reporting Officer, the Reviewing Officer and the Accepting Authority. The competent authority is required to take a decision on independent evaluation of the matter. It is natural that the decision taken by him is to be supported by reasons. It is only through this process that subjective opinions are avoided, and an element of objectivity is ensured.

11. In the instant case, the applicant submitted a detailed representation dated 23.03.2013 to the competent authority offering his own version about the comments made by the Reporting Officer. Apart from that, the task accomplished by him was furnished with facts and figures. However, the competent authority has simply rejected the representation with one line order dated 28.05.2013. It reads as under:-

"Competent authority has considered your representation for upgradation of APAR for 2011-12 and decided that the rating remains unchanged."

The result of the appeal to the Railway Board was no way different. Here again, it was with a single sentence. Only difference is that it is a bit longer. It reads as under:-

"With reference to your above letter, it is mentioned that your appeal for adverse remarks/grading in the APAR for the year 2011-12 (Pt.I) has been considered and it has been decided by the Competent Authority that as per DoP&T's OM dt. 14.05.2009 there is no mention of appeal after consideration of representation."

12. Both the impugned orders dated 28.05.2013 and 21.11.2017 are from a very high level of administration of the Railways. One expects a detailed and objective consideration, and by any standard or on the touchstone of principles of Administrative Law they cannot be sustained. Added to this, the concerned Ministry is said to have observed as recently as on 30.01.2018 that APAR of the applicant in question needs to be reviewed.

13. We, therefore, allow the OA and set aside the impugned orders dated 28.05.2013 and 21.11.2017. We direct the competent authority to pass fresh orders in accordance with law, duly taking into account each and every point urged by the applicant in his representation as well as the remarks of the Minister concerned, within a period of two months from the date of receipt of certified copy of this order. There shall be no order as to costs.

All ancillary applications stand disposed of.